IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8.2.2005

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION Nos.17633 AND 17634/1995

V. Sankaran .. Petitioner in W.P.NO.17633/1995
K. Rajamanickam .. Petitioner in W.P.No.17634/1995

vs.

1. The Managing Director
   Tamil Nadu Housing Board
   33, Anna Salai,
   Nandanam
   Madras - 600 035

2. The Secretary to Government
   of Tamil Nadu
   Housing and Urban Development
   Department, Fort Saint George,
   Madras - 9 .. Respondents in both the writ petitions

* * *

Writ Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarifed Mandamus as stated therein.

* * *

For petitioners : Mr.Balan Haridas
For 1st respondent : Mr.D.Veerasekaran
For 2nd respondent : Ms.V.Velumani, AGP

COMMON ORDER

The petitioners in both the writ petitions would seek to issue Writs of Certiorarified Mandamus to call for the records of the respondents which culminated in the passing of the Order dated 27.6.1995 in Memo No. Personnel (NT)5/73360/93 by the first respondent herein, quash the same and direct the respondents to regularise the services of the petitioner in the post of Typist with effects from 17.11.1986.

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2. The case of the petitioners is that they joined the services of the first respondent respectively on 17.5.1973 and 1.8.1973 as daily wage earners under Nominal Muster Roll (N.M.R.); that pursuant to the first respondent's Proceedings No.ET.6/104625/79 dated 23.11.79, the petitioners' services in both the writ petitions as Workers under N.M.R. Category, were converted into one under Non-Provincialised Work Charged Establishment category with effects from 17.11.1973 and 1.2.1979 respectively in accordance with the provisions of G.O.Ms.No.51 Finance, dated 14.1.1972; that in the regular category, the petitioner in W.P.NO.17633/1995 was designated as Assistant Plumber and the petitioner in W.P.No.17634/1995 was designated as Gardener in the scale of pay of Rs.130-3-160-4-180-5-190 and the benefits of H.R.A and periodical increments were also sanctioned from the date on which the petitioners were brought under Non-Provincialised Work Charged Establishment category; that the second respondent passed G.O.Ms.No.567 dated 28.4.1980, which was in conformity with the above proceedings of the first respondent and the said G.O permitted the first respondent to appoint personnel recruited as N.M.R and N.P.W.C.E upto 31.12.1977, who satisfied the rules relating to age and educational qualification to regular posts without reference to the Employment Exchange and hence absorption of the petitioners as Assistant Plumber and Gardener in the regular category with effects from 22.11.1978 and 1.2.1979 is in order and in conformity with the rules.

3. The petitioners would further submit that they both are fully qualified to hold the posts and when regular vacancy arose, they requested the first respondent to consider them for the same; that the first respondent, by his Proceedings No.E2.6/25908/85 dated 14.11.1986 promoted the petitioners along with M.H. Kumar as typists in the scale of pay of Rs.610-20-730-25-955-30-1075 in the typing cell; that the petitioners joined as Typists on 17.11.1986; that the first respondent, by Proceedings No.ENT.4/25908/95 dated 9.11.1992 regularised the services of the petitioners with effects from 12.5.1992.

4. The petitioners would further submit that their services as typist should have been regularised with effects from 17.11.1986, the date on which they were promoted as Typists under the first respondent; that G.O.Ms.No.567 dated 28.4.1980, came to be passed in view of the difficulties faced by the first respondent in regularising the persons who were working in the N.M.R and M.P.W.C.E categories for quite a long time and in order to absorb them in the regular posts without reference to the Employment Exchange; that hence those persons working with the first respondent under N.M.R and N.P.W.C.E categories, who had satisfied the rules relating to age and educational qualifications as on 31.12.1977, were absorbed in various

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regular posts; that the petitioners were given the regular post of Assistant Plumber and Gardener as they satisfied all the conditions imposed in G.O.Ms.No.51 Finance dated 14.1.1977 and not following G.O.Ms.No.567 dated 28.4.1980; that the petitioners were promoted as Typists by Proceedings No.E2.6/25908/85 dated 14.11.1986.

5. The petitioners would further submit that in the year 1988, the first respondent issued a combined seniority list among the categories of Junior Assistants/Shroffs/Revenue Inspectors/ Typists and Steno Typists and that petitioners' names were ranked as 368 and 367 respectively; that several persons who did not satisfy the age and educational qualifications were appointed by the first respondent directly from the N.M.R and N.P.W.C.E categories as Junior Assistants and the first respondent requested the second respondent to exempt those persons from satisfying the conditions as to age and educational qualification were exempted in the same manner; that the second respondent by Letter (Ms) No.210 dated 11.3.1993 relaxed the rules relating to age and educational qualification with effects from the date of appointment in respect of 49 persons, who did not satisfy the rules relating to educational qualifications and 6 persons who did not satisfy both the age and educational qualifications were exempted in the same manner; that similarly, age/educational qualification relaxation has been approved by the second respondent in respect of Messers P.Ramalingam and C.Veeraraghavan, typists with effects from the date of appointment; that however, the respondents did not take any step for regularising the services of the petitioners from the date of their respective appointments; that the second respondent has regularised the services of one M.H.Kumar as typist with effects from the date on which he was absorbed as typist; that most of the persons who have been regularised in service with effects from their respective dates of appointment do not satisfy the rules relating to educational qualification.

6. The petitioners would further submit that they made several representations to the second respondent and requested him to regularise their services with effects from 17.11.1986, the date on which they were promoted as typist; that the first respondent forwarded the same to the second respondent; that the orders regularising the services of the petitioners to the regular post of Assistant Plumber and Gardener were passed on 23.11.1979 and G.O.Ms.No.567 dated 28.4.1980; that the petitioners submit that the said G.O. could not have been applied for promoting a person who was already holding a regular post with the first respondent; that the petitioners further submit that in view of the order dated 27.6.1995 passed by the first respondent, they have to forego their seniority and those

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persons who have been appointed at a later point of time to the regular posts and whose services have been regularised by the second respondent would be placed above the petitioners in the seniority list and that their service benefits would also be affected prejudicially. On such grounds, the petitioners would seek the relief stated supra.

7. The second respondent filed a counter which was adopted by the first respondent also. In the counter, it is stated that the petitioner in W.P.No.17633/1998 was engaged as N.M.R on daily wage basis on 17.5.1973 and he was designated as Assistant Plumber in the scale of pay of Rs.120-3-160-4-180-5-190 by the Executive Engineer and Administrative Officer, Besant Nagar Division, Tamil Nadu Housing Board; that in the case of the petitioner in W.P.No.17634/1998 he was engaged as N.M.R on daily wages basis on 1.8.73; that after completion of six months of service as NMR, he was brought under N.P.W.C.E with effects from 1.2.1974 and designated as Gardener; that subsequently, their services were brought under regular establishment with effects from 22.11.1978 and 1.2.1979 respectively and benefits mentioned in G.O.Ms.No.51 dated 14.1.1977 were given to the petitioners; that G.O.Ms.No.567 Housing and Urban Development Department dated 28.4.1980 permits the Tamil Nadu Housing Board to appoint personnel engaged as N.M.R. NPWCE upto 31.12.1977, subject to the condition that they satisfy the rules relating to age and educational qualification, to the regular post, without reference to employment exchange; that the petitioners were not qualified both in age and education as per G.O.Ms.No.567 dated 28.4.1980 and 31.12.1977; that further they have crossed the age limit prescribed by the Government for fresh appointment; that they were qualified in respect of age and education to the post of typist in the year 1983 (i.e., after 31.12.1977); that they were not qualified in respect of age and education to the post of typist as on 31.12.1977; that however, taking into consideration their length of service they were appointed as Typists on 17.11.86 and not promoted as typists, since Assistant Plumber and Gardener posts are not feeder posts to the post of typist, as per Tamil Nadu Housing Board Service Regulation 1969; that a proposal for the appointment of Typists was submitted to the Government for approval, since the Government is the competent authority as the maximum scale of pay exceeds Rs.1000/- as per service Regulation of Tamil Nadu Housing Board 1969; the Government has approved this proposal on 12.5.92 subject to the conditions that the service of the petitioners should be regularised with effect from the date of issue of the said order and accordingly their services were regularised on 12.5.1992; that since they have crossed the age limit, regularisation of their services from the date of their appointment is not feasible. On such grounds, this respondent would pray to dismiss both the above writ petitions.

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8. During arguments, the learned counsel for the petitioners would submit that the respondents ought not to have applied G.O.Ms.No.567 dated 28.4.1980, Housing and Urban Development Department in the matter of regularising the services of the petitioners in the post of Typist; that the respondents should have seen that G.O.Ms.No.567 dated 28.4.1980 is applicable only to those persons who were to be regularised from the N.M.R and N.P.W.C.E Categories; that the learned counsel for the petitioners further submits that the respondents ought to have seen that the petitioners were already holding regular post of Assistant Plumber and Gardener from 17.11.1978 and 1.2.1979 in accordance with the provision of G.O.Ms.No.51/Finance dated 14.1.1977 and G.O.Ms.No.567 dated 28.4.1980 is not meant for those persons who are already holding a regular post; that it is the further submission of the learned counsel for the petitioners that the order dated 27.6.1995 passed by the first respondent is illegal and it does not contain on its face any ground to show that it has been made in conformity with the rules. The impugned order dated 27.6.1995 of the first respondent is lacking in fairness and equality of treatment.

9. On the contrary, the learned counsel for the respondents would submit that the petitioner in W.P.No.17633/1995 was engaged as NMR on daily wages basis on 17.5.73 and after completion of six months of service, his daily wages service was brought into NPWCE with effect from 17.11.73 and he was designated as Assistant Plumber and the petitioner in W.P.No.17634/1995 was engaged as N.M.R on daily wages basis on 1.8.73 and after completion of six months of service, he was brought under NPWCE with effect from 1.2.74 and designated as Gardener; that he further submits that the petitioners were brought under regular establishment with effects from 22.1.78 and 1.2.79 respectively and the benefits mentioned in G.O.Ms.No.51, Finance dated 14.1.77 were given to the petitioners and G.O.Ms.No.567 dated 28.4.80 permits the first respondent to appoint personnel engaged as NMR upto 31.12.77, subject to the condition that they satisfy the rules relating to age and educational qualification, to the regular post, without reference to employment exchange;that the petitioners were not qualified both in age and educationally as per G.O.Ms.No.567 and further they have crossed the age limit prescribed by the Government for fresh appointment; that they were qualified in respect of age and education to the post of typist in the year 1983 (i.e., after 31.12.77); that they were not qualified in respect of age and education to the post of typist as on 31.12.77; that the learned counsel for the respondents submits that the petitioners were appointed as typist and not promoted as typist since their posts are not feeder posts to the post of typist and the appointment of typist proposal was submitted to

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Government for approval, the same has been approved on 12.5.92 subject to the conditions that the service of the petitioners should be regularised with effect from the date of issue of the order i.e, on 12.5.92.

10. In consideration of all the materials placed on record and upon hearing the learned counsel for both, it comes to be seen that in the appointment order dated 14.11.1986, both the petitioners and yet another M.H.Kumar were appointed as Typists as per proceedings No.E2.6/25908/85, in the scale of pay of Rs.610-20-730-25-955-30-1075 and they were directed to report for duty immediately. Petitioners would argue to the effect that when the second respondent has regularised the services of M.H.Kumar as Typist with effects from the date on which he was absorbed as Typist, the petitioners being similarly placed with the said M.H.Kumar should not have been discriminated against and their services should have also been regularised in the same manner as that of the said Kumar; that even in the case of age/educational qualifications, regarding one P.Ramalingam and another C.Veeraraghavan, both Typists, the age/educational qualifications have been relaxed and the same has been approved by the second respondent. No details were given by the respondents for the discrimination alleged on the part of the petitioners. When there is a Rule or privilege, the same should be extended to all similarly placed persons, lest, it would only mean discrimination whereas no such discrimination could be made in the eye of law. Therefore, it is only just and proper to treat the petitioners also on par with the said M.H.Kumar whose services have been regularised with effects from the date on which he was absorbed as Typist and treating the petitioners on par with M/s.P.Ramalingam and C.Veeraraghavan Typists granting relaxation to the age/educational qualifications. It further comes to be seen that six more persons have been accorded with such relaxation regarding age/educational qualification and therefore it is only desirable on the part of the respondents to extend the same benefit or relaxation in favour of the petitioners also who are similarly placed and no satisfactory answer comes forth on the part of the respondents for these regularisation and relaxation granted in favour of others and denying the same so far as the petitioners are concerned and therefore it is only just and proper to grant the reliefs as prayed for and hence the following order:

In result,

(i) both the above writ petitions succeed and they are allowed.

(ii) The orders both dated 27.6.1995 made in Memo Nos.Personnel (NT) 5/73360/93 by the first respondent are hereby quashed.

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(iii) The respondents are directed to regularise the services of the petitioners in the post of Typist w.e.f. 17.11.1986.

However, in the circumstances of the cases, there shall be no order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

sr/Rao

To

1. The Managing Director
   Tamil Nadu Housing Board
   33, Anna Salai,
   Nandanam
   Madras - 600 035

2. The Secretary to Government
   of Tamil Nadu
   Housing and Urban Development
   Department, Fort Saint George,
   Madras - 9

1 cc to Govt. Pleader, Sr. 5515
1 cc to Mr. D. Veerasekaran, Advocate, Sr. 5356
2 cc to Mr. Balan Haridas SR. 5210,5211

W.P.Nos.17633&17634/1995

MDR (CO)
kk 4.3.05

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